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Re: Oil Pollution Prevention:
SPCC Guidance for Regional Inspectors
Comments

Duke Energy is a diversified energy company with a portfolio of natural gas and electric businesses, both regulated and unregulated, and an affiliated real estate company. Headquartered in Charlotte, North Carolina, Duke Energy supplies, delivers and processes energy for customers in the Americas. Duke Energy owns and operates thousands of facilities across the U.S. regulated under SPCC and under the proposed amendments to the 2002 SPCC rule.

Duke Energy is concerned about the potential use by EPA inspectors of the Agency's SPCC Guidance Document in advance of compliance deadlines for the 2002 amendments. These comments assume that the deadline for amendment and implementation of SPCC Plans to comply with the 2002 amendments will be extended, as proposed on December 12, 2005, beyond the current 2006 deadlines. To address this concern, Duke Energy recommends that EPA include in the guidance document a statement which makes it clear that any inspections that take place prior to the final effective date of the amended 2002 SPCC rule will not be based on the requirements of that rule but rather on pre-2002 amendment regulatory requirements.

EPA has extended the deadlines for compliance with the 2002 amendments on several occasions due to legal actions and further rule changes to allow industry time to understand the regulations, develop Plans and budget and implement facility modifications. The SPCC Guidance Document discusses the 2002 amendments in its Introduction, clearly acknowledging

that the amendments are a primary driver in EPA's issuing the Guidance Document. While Duke Energy understands the Guidance Document is not regulation, its use by EPA inspectors in advance of the final effective date of the 2002 SPCC amendments could establish expectations that are not required to be in place until a future date. Duke Energy believes the guidance document will be a valuable aid to industry in providing clarity around certain areas of the SPCC amendments, however, understanding and implementing applicable portions of the Guidance Document require a period of time just as EPA has provided for the SPCC amendments. Therefore, the Guidance Document should not form the basis for SPCC inspections prior to the regulatory deadline for compliance with the 2002 amendments.